IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 12, 2005 Session

WANDA KATE SAUCEMAN JOINER v. CHARLES RICHARD JOINER

Extraordinary Appeal from the Fourth Circuit Court for Knox County
No. 100598 Bill Swann, Judge

No. E2005-01619-COA-R10-CV - FILED OCTOBER 27, 2005

The trial judge, the Honorable Bill Swann, ruled that David C. Lee, Esquire – because of Mr. Lee's announced intention to run against the judge in the August, 2006, general election – could not represent the defendant Charles Richard Joiner ("Husband") in the above-styled divorce case now pending in the Fourth Circuit Court for Knox County. Husband appeals. We reverse.

Tenn. R. App. P. 10 Extraordinary Appeal; Judgment of the Fourth Circuit Court Reversed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

David C. Lee, Knoxville, Tennessee, for the appellant, Charles Richard Joiner.

Patti Jane Lay, Knoxville, Tennessee, for the appellee, Wanda Kate Sauceman Joiner.

OPINION

I.

We granted Husband's Tenn. R. App. P. 10 application for an extraordinary appeal to review the order of the trial court entered July 12, 2005. That order, in its entirety, provides as follows:

> The memorandum opinion pronounced in ***Rose v. Rose***, docket no. 93888, dated June 10, 2005, put of record June 27, 2005, holds that Mr. Lee cannot function in this court as counsel in any litigation whatsoever.
>
> On July 1, 2005, attorney David Lee filed various papers in the ***Joiner*** litigation. Those filings by Mr. Lee cannot be received, cannot be acted upon, and are held for naught. However, they will be

> preserved on the left side of the file for possible future use by an appellate court. The only filings operative in the litigation are the mother's three filings of June 21, 2005.

Pursuant to our instructions, the parties in the instant case filed the ***Rose v. Rose*** memorandum opinion, which is referred to in the above-quoted order. As pertinent to this appeal, the trial judge made the following statements in his memorandum opinion in the ***Rose*** case:

> Mr. Lee is – Mr. Lee [. . .] it is [he] who voluntarily created the conflict with [sic] which makes it impossible for him to practice in Fourth Circuit Court. It's important for everyone to realize that it is not this Judge who created the conflict. Indeed it is this Judge who worked very hard for months on end, as you can see by tracking the Lee versus Lee litigation, to keep Mr. Lee practicing in this court.
>
> But it is Mr. Lee who voluntarily created the conflict, and he did it in his own divorce litigation, Lee versus Lee, for reasons that were sufficient to him. He stated on the record today, again, as he has done on other days, that he's going to run for election against this Judge. That's all well and good, but with it comes certain consequences. As he intended, it became necessary, first of all, for this Judge to recuse himself in Mr. Lee's personal divorce. That's what he wanted, and he obtained it.
>
> Mr. Lee was there both litigant and attorney, so it was necessary in that litigation. But when he created the running-for-election conflict, which he did voluntarily, it also brought with it the necessity for him to structure his law practice accordingly. His statement was a choice freely made, a choice freely made to create a conflict with this Judge.
>
> It's a choice that brought with it the necessity to structure his law practice to function without Fourth Circuit Court cases. That shouldn't be a great burden, because he never had Fourth Circuit Court cases until he was a party divorce litigant here. Then he began taking pro bono cases in Fourth Circuit.
>
> So, the loss of Fourth Circuit practice will be of no significance to David Lee.
>
> But the point to focus on is that he made a free choice. He cannot then use his freely made choice as a – as something attractive to clients, as an enhancement of his law practice. In actual fact it is a

debility of his law practice. Let's call an apple and [sic] apple, and let's not call it something else.

Mr. Lee seeks to use this debility as an asset, providing clients with an arguably automatic "quick exit," from any and all adjudications before this Judge. This is, first of all, contrary to fundamental fairness. I believe that's something we have to focus on. Secondly, it is contrary to his duty as an attorney.

What can we say about fundamental fairness? Well, one thing we might look at is what are the rights of an adverse party? What are the rights of today's adverse party, Mr. Rose, or of any adverse parties engaged before this Court? Perhaps they have been before the Court for some time, maybe for a lengthy time as in Rose versus Rose. Where are these litigants' rights to a continuity of adjudicative style? To a continuity of efficient development of their case? To escaping expensive hours, maybe days, of retooling the litigation for a new trier of fact? Where are their rights to call upon the policies that are known to have been established in this Court? Is it fundamentally fair just to take a hike? Is that fundamentally fair to an adverse party?

One thinks, inter alia, of orders of protection. The policies that have been established by this Court in orders of protection are more progressive than in some parts of the state. They are firmly and long established and followed. Do we play a trump card and say, "oh no, oh no, we will go elsewhere"? Is that fundamentally fair? The answer is no, clearly not. Secondly: What about duties as a lawyer? Lawyers are officers of the court. They are part of the enterprise. They are not outside the castle walls, lobbing fire balls against the castle. They are part of the dignity of the Court system. They work within the Court system to bring it to its best outcomes. They bring it to its best adjudications. If that were not their role, they would not be required to disclose authority contrary to a client's position. But they are so required. It's because we are all engaged in the highest calling – the achievement of an appropriate outcome consistent with zealous advocacy. Lawyering is not simply about winning in spite of fairness, but winning while displaying fairness. It is not zealous advocacy to obtain a recusal because of the lawyer's – because of a lawyer's own carefully chosen acts.

What if an attorney who practices before Judge A is asked to represent Judge A in his personal divorce action? Clearly, the lawyer is free to do so, free to represent Judge A. Clearly, the judge has paid

him/her a compliment in making the request. But it is also clear that if the lawyer accepts the representation, for ethical reasons he must then remove himself from practice in Judge A's court for an extended period of time. With the choice comes the burden. So it is with Mr. Lee.

Mr. Lee obtained the recusal in his own divorce litigation as noted. This Judge had to recuse himself there because Mr. Lee was both attorney and a party. The things that he did in Lee versus Lee made recusals mandatory in all the then-pending cases in which he was involved as counsel. He was at that time engaged in some pro bono cases. But here in Rose, we have an effort to undertake new representation and say "Oh, Swann must recuse himself."

David Lee may not use his artificially created conflict, which was done for his own reasons in his own divorce litigation, as a strategy to remove this Judge from any and all litigation that he chooses to enter. It is an affront to the orderly administration of justice. It is unfair to adverse parties. It is contrary to his duties as an officer of the court. It is contrary to his highest calling in our profession. It is not as he says "forum shopping." It's a shabby stratagem which reflects poorly upon him who uses it.

So, we are constrained to deny the motion to recuse in Rose versus Rose. As noted above, Mr. Lee can always continue to assist Ms. Rose without appearing in court, as he says he did two years ago, if he chooses to do so. Mr. Lee can have no role in this case. He does have no role in this case. Neither in the resolution of the small attorney fee issue which remains, nor in any future litigation which might occur. As a courtesy to him today, if he wishes, he may remain as a spectator, but he will have to withdraw from the counsel table and seat himself with the spectators behind the bar. If he wishes to speak with Ms. Rose outside the courtroom today, appropriate recesses will be granted to allow him to do that. He cannot function in this Court as counsel, and will not after today be allowed in the courtroom in this or any other litigation, save for the possible [application for permission to appeal pursuant to Tenn. R. App. P. 9]. Mr. Lee's prohibition of practice before this court extends to practice before any master of this court, as well as to practice before the child support referee when she is engaged in Fourth Circuit Court matters. The filings by Mr. Lee in Rose versus Rose cannot be received, cannot be acted upon, and are held for naught. However, they will be

> preserved on the left side of the file for future possible use by an appellate court.

(Underlining in original).

II.

In our August 3, 2005, order granting Husband's Rule 10 application, we directed that this case would be expedited on appeal. Accordingly, after the parties filed their briefs, this case was orally argued on September 12, 2005. The sole issue on appeal is a narrow one: Does a judge have the power to prohibit an attorney, otherwise admitted and authorized to practice law in the judge's court, from representing clients in that court based solely upon the attorney's public statement that he intends to run against the judge in the next election?

III.

The Tennessee Supreme Court has the "inherent power of the judiciary in this State." ***In re Petition of Burson***, 909 S.W.2d 768, 772 (Tenn. 1995). Its authority comes from the "broad grant of power" found in Tenn. Const. Art. VI, § 1. ***Id***. "Included within [the] Court's inherent power is the essential and fundamental right to prescribe and administer rules pertaining to the licensing and admission of attorneys." ***Id***. at 773. The High Court "exercises *original* jurisdiction over issues pertaining to the practice of law." ***Id***. (emphasis added). The Court's supervisory authority over the practice of law was addressed by the Court in the case of ***Doe v. Bd. of Prof'l Responsibility***, 104 S.W.3d 465 (Tenn. 2003):

> In furtherance of our duty to regulate the practice of law in Tennessee, we issue licenses to those whom we deem qualified to engage in the practice of law, and, when appropriate, discipline attorneys who violate the rules governing the legal profession. It is, therefore, beyond dispute that all licensed attorneys within Tennessee are subject to the jurisdiction of this Court, and its agent, the Board of Professional Responsibility.

Id. at 470.

The licensing of attorneys is the subject of Rule 7, Rules of the Supreme Court of the State of Tennessee ("Rules of the Supreme Court"). Section 1.05 of Rule 7 provides as follows:

> All persons admitted to the bar of Tennessee are by virtue of such admission: (i) officers of the courts of Tennessee, eligible for admission to practice in any court in this State, and entitled to engage in the "law business"; and (ii) subject to the duties and standards imposed from time to time on attorneys in this State.

It is undisputed that Husband's choice to represent him in this case – David C. Lee – is licensed to practice law in the State of Tennessee and admitted by the Supreme Court to practice law before the courts of this State.

Pursuant to the provisions of Section 1.1 of Rule 9, Rules of the Supreme Court,

> [a]ny attorney admitted to practice law in this State . . . is subject to the disciplinary jurisdiction of the Supreme Court, the Board [of Professional Responsibility], the hearing committees [of the Board], hereinafter established, and the Circuit and Chancery Court.

Grounds for attorney discipline under Rule 9 are generally addressed in Section 3.2:

> Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Attorney's Oath of Office, the Rules of Professional Conduct of the State of Tennessee,[1] or T.C.A. § 29-308, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

Rule 9 sets forth detailed procedures for the discipline of attorneys, but the general disciplinary actions authorized by the rule range from the most extreme, *i.e.*, disbarment, to lesser forms of discipline, *i.e.*, suspension, public censure, private reprimand, and private informal admonition. Section 4, Rule 9, Rules of the Supreme Court.

In addition to the disciplinary powers set forth in Rule 9, Rules of the Supreme Court, all courts possess inherent, and sometimes statutory (*e.g.*, contempt), power "to maintain control over

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[1] Rule 8.4 of the Tennessee Rules of Professional Conduct specifically lists the following acts as "professional misconduct" warranting disciplinary action:

> (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
> (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
> (d) engage in conduct that is prejudicial to the administration of justice;
> (e) attempt to, or state or imply an ability to influence a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;
> (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
> (g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

proceedings conducted before [them]." Section 1.2, Rule 9, Rules of the Supreme Court. The Supreme Court has stated that Rule 9[2] "does not deny to any court the power to discipline any lawyer by suspension or *disbarment from practice in that particular court*, for misconduct directly affecting the processes and proceedings of that court." ***Ex parte Chattanooga Bar Ass'n***, 566 S.W.2d 880, 884 (Tenn. 1978) (emphasis added).

The Attorney General addressed the inherent power of a court to prohibit an attorney from appearing in that court by stating the following:

> Use of inherent disciplinary authority to prohibit an attorney from appearing in court should be limited. The power to discipline attorneys is not an arbitrary one to be exercised at the pleasure of the court or because of passion, prejudice, or personal hostility; it is rather one to be used with moderation and caution, in the exercise of a sound judicial discretion, and only in a clear case, for the most weighty reasons, and upon clear legal proof.

Tenn. Op. Att'y Gen. 03-053 (citation omitted); *see also* 48A C.J.S. *Judges* § 151 (2004) ("Judicial discretion is not a power to be used to gratify the passion, partiality, whim, vindictiveness, or idiosyncrasies of the individual judge . . . ."). "To be sure there is a limitation upon the inherent authority of every court. But the courts must be trusted with complete authority, consistent with constitutional rights and privileges of all citizens, to protect its own honor from those who would prostitute its processes for unlawful personal gain." ***Ex parte Chattanooga Bar Ass'n***, 566 S.W.2d at 883 (citation omitted).

A court must balance its "inherent power to control the exercise of the administration of justice" with other important interests. ***State v. Husky,*** 82 S.W.3d 297, 311 (Tenn. Crim. App. 2002) (citation omitted) (the court's inherent power to remove an "overzealous" attorney from further representation was outweighed by a criminal defendant's right to counsel of his choice); *see also* ***Ramsey v. Bd. of Prof'l Responsibility,*** 771 S.W.2d 116, 121 (Tenn. 1989) (finding that an attorney's disrespectful comments about a judge were protected by the 1st amendment and did not warrant a sanction on the ground that the comments were prejudicial to the administration of justice). Less drastic and more appropriate disciplinary remedies include: the court's censuring of an obstructive attorney; requesting that the bar association take disciplinary action; assessing a fine or imposing a term of imprisonment for contempt; or rejecting an attorney's claims for compensation relative to inappropriate time spent or wasted on unnecessary matters. ***Husky,*** 82 S.W.3d at 311.

IV.

[2] At the time of the High Court's pronouncement in the ***Ex parte Chattanooga Bar Ass'n***, 566 S.W.2d 880, 884 (Tenn. 1978) case, the present Section 1.2 was in Rule 42 of the Rules of the Supreme Court. *See* ***Scruggs v. Bracy***, 619 S.W.2d 101, 102 (Tenn. 1981).

The genesis of the trial judge's decision to disbar Mr. Lee from practicing law in the trial court is indisputably the latter's public[3] announcement that he intends to run against the trial judge for the position of Judge of Fourth Circuit Court for Knox County in the next general election in August, 2006. The trial judge noted that Mr. Lee had "made a free choice." The trial judge stated that Mr. Lee had "voluntarily" created "the running-for-election conflict." The trial judge said that Mr. Lee's decision to run and the conflict created by that decision had "certain consequences." One of those "consequences" was, in the words of the trial judge, "the necessity to structure his law practice to function without Fourth Circuit Court cases."

Prior to Mr. Lee's attempt in the instant litigation to act as counsel for Husband, who was then a defendant in a pending divorce case, the trial judge had recused himself, first in Mr. Lee's personal divorce case and then in cases where Mr. Lee was acting as counsel for a party. There is some uncertainty in the record, first, as to when the trial judge recused himself in Mr. Lee's personal divorce, and, second, as to why he decided to recuse himself.

In the record before us is a memorandum opinion of the trial judge in Mr. Lee's personal divorce case. The opinion was rendered from the bench on August 11, 2003. At that time, Mr. Lee was representing himself. It is clear from that opinion and from other material in the record that the Lee divorce litigation, as of that date, had already had a protracted and contentious history. The trial judge had presided over the case up to that point. In his memorandum opinion, the trial judge made the following remarks:

> So, we only have two issues remaining, educational custody and the possibility of attorney fees. Then this Judge will have concluded those matters that were brought to his attention as of May 9th. And I want you to know that I seriously consider passing the torch to another judge once those issues are concluded, because I do believe based upon this case, that there are no circumstances under which it is appropriate for a trial judge to sit in contested domestic litigation, it being such a bruising experience, with an attorney who practices before that Court. It is just too bruising for the parties, too bruising for the relationship between the attorney and the Judge, too bruising for the members in his firm.
>
> So, when we get to the point of closure, this Judge is going to allow someone else to step in and do what appears to be interminable litigation during the remaining minority of this child, if David Lee has his way.

In the ***Rose*** memorandum opinion quoted earlier in this opinion, the trial judge justified his decision to recuse in the Lee divorce case with the following comment: "Mr. Lee was there both

[3] It was public in the sense that it was announced by Mr. Lee in open court.

litigant and attorney, so it was necessary in that litigation." What is unclear from the record is why Mr. Lee's dual roles as litigant and attorney did not cause the trial judge to recuse at the beginning of the case instead of at what appears to be the latter stages of that litigation. It may be that the trial judge's practice is not to hear divorce cases of attorneys *who regularly practice in his court*.[4] There is a suggestion in the record that Mr. Lee did not have a regular practice in Fourth Circuit Court until sometime after the Lee divorce litigation had been ongoing for some period of time. What is clear is (1) that the trial judge did eventually recuse himself in the Lee divorce litigation and (2) that another judge was assigned to preside over the remaining aspects of that litigation.

As previously noted, the trial judge, following his recusal in Mr. Lee's personal divorce litigation, thereafter recused himself in all cases in the trial court where Mr. Lee was involved as counsel for the plaintiff or the defendant. This was certainly appropriate if the trial judge determined that he could not "[i]impartially" hear cases involving parties represented by Mr. Lee or if the trial judge decided that, because of Mr. Lee's decision to run against him in the next election, there would be an appearance of "impropriety" if he continued to preside in cases involving the representation of Mr. Lee. *See* Canons 2 and 3, Code of Judicial Conduct, Rule 10, Rules of the Supreme Court.

Beginning with the ***Rose*** case, the trial judge decided that disbarment of Mr. Lee from practice in Fourth Circuit Court, rather than the trial judge's earlier decision to recuse, was the appropriate response to Mr. Lee's decision to challenge the trial judge in the next general election. The memorandum opinion in ***Rose*** clearly reflects that the trial judge's decision to opt for disbarment as opposed to recusal was based upon the trial judge's perception that Mr. Lee's decision to run against him and Mr. Lee's concomitant decision to undertake a divorce practice in Fourth Circuit Court were, in the trial judge's words, "providing clients with an arguably 'quick exit,' from any and all adjudications before this Judge." The trial judge stated that he believed this was "contrary to fundamental fairness" and "contrary to [Mr. Lee's] duty as an attorney." The trial judge expanded on this thought with the following remarks:

> What can we say about fundamental fairness? Well, one thing we might look at is what are the rights of an adverse party? What are the rights of today's adverse party, Mr. Rose, or of any adverse parties engaged before this Court? Perhaps they have been before the Court for some time, maybe for a lengthy time as in Rose versus Rose. Where are these litigants' rights to a continuity of adjudicative style? To a continuity of efficient development of their case? To escaping expensive hours, maybe days, of retooling the litigation for a new trier of fact? Where are their rights to call upon the policies that are known to have been established in this Court? Is it fundamentally fair just to take a hike? Is that fundamentally fair to an adverse party?

[4]The local rules of Fourth Circuit Court do not address this issue.

> One thinks, inter alia, of orders of protection. The policies that have been established by this Court in orders of protection are more progressive than in some parts of the state. They are firmly and long established and followed. Do we play a trump card and say, "oh no, oh no, we will go elsewhere"? Is that fundamentally fair? The answer is no, clearly not. Secondly: What about duties as a lawyer? Lawyers are officers of the court. They are part of the enterprise. They are not outside the castle walls, lobbing fire balls against the castle. They are part of the dignity of the Court system. They work within the Court system to bring it to its best outcomes. They bring it to its best adjudications. If that were not their role, they would not be required to disclose authority contrary to a client's position. But they are so required. It's because we are all engaged in the highest calling – the achievement of an appropriate outcome consistent with zealous advocacy. Lawyering is not simply about winning in spite of fairness, but winning while displaying fairness. It is not zealous advocacy to obtain a recusal because of the lawyer's – because of a lawyer's own carefully chosen acts.

It is not clear from the record whether the trial judge is saying that Mr. Lee does not intend to be a candidate for Judge of Fourth Circuit Court and has made his *announcement* simply as a ploy to require the trial judge to recuse himself in cases involving the representation of a party by Mr. Lee. If this is what the judge is saying, we are compelled to state that there is no evidence supporting this assertion in the record before us. If, on the other hand, the trial court is just stating what he *assumes* to be true – without any objective evidence of same – such an assumption is no more likely to be true than that Mr. Lee has announced his intention to run because he believes – rightly or wrongly – that the trial judge is not doing a good job and should be replaced.

The trial judge made an earlier decision to recuse himself. As a consequence of this decision, Mr. Lee's entry into a case, be it as counsel for a plaintiff or as counsel for a defendant, would necessarily prompt Mr. Lee to file a motion for recusal. While the trial judge's "exit" from a case is, therefore, ultimately traceable to Mr. Lee's announcement, this does not mean that Mr. Lee should be disbarred from practicing in Fourth Circuit Court. There is a fundamental difference between Mr. Lee practicing before the trial judge and Mr. Lee practicing in Fourth Circuit Court. The trial judge has decided, for reasons deemed by him to be sufficient, that he should not sit in judgment on cases brought by Mr. Lee as attorney for a plaintiff or in cases where Mr. Lee is hired by a party who has been sued in Fourth Circuit Court. We find nothing wrong with this decision under the circumstances of this case; but this does not mean that Mr. Lee should be disbarred from practicing in Fourth Circuit Court. If the trial judge cannot hear his cases, he can interchange with other local judges or, as he did in the Lee divorce litigation, seek the designation of a judge to hear Mr. Lee's cases. Presumably, such a substitute judge would employ the published local rules of the Fourth Circuit Court in handling Mr. Lee's cases.

It is axiomatic that a litigant does not have a right to have his or her case heard by a particular judge. It is likewise clear that a litigant does not have a right to have the litigant's case heard by a judge who has a certain style or employs a particular *modus operandi* in hearing and deciding cases. Thus, recusal and the substitution of another judge does not involve a violation of a protected right.

Disbarment from practicing in a given court under the circumstances of this case sends the wrong message. It says that if one decides to run against an incumbent judge, he or she must give up the attorney's practice in the judge's court. This may not be a significant matter in an urban area where there are a number of judges/chancellors with concurrent jurisdiction; but it would be significant in a rural area where there are fewer options. We are not willing to craft a "disbarment" rule for densely-populated areas which, as a practical matter, could not be fairly applied statewide.

The action of the trial judge in this case is also contrary to the public policy of encouraging competent individuals to run for judgeships. One would hope that those who practice family law would be a significant part of the pool of attorneys who might be interested in serving the public as a judge of a court having family law jurisdiction. Such would probably not be the case if the announcement of one's intention to run for a family law judgeship would mean the loss of that portion of one's practice.

Mr. Lee has been duly admitted to practice before the courts of this State. This includes the right to practice in Fourth Circuit Court. This right cannot be taken away from him absent his misconduct or failure to abide by applicable rules governing the practice of law. There is no evidence that he has been guilty of either. Certainly, his announced intention to run against the trial judge does not fall within the definition of misconduct or otherwise violate an applicable rule with respect to the practice of law. While a judge with respect to his or her court has the "inherent power to control the exercise of the administration of justice," that power is not so expansive as to include disbarment of a potential and announced challenger for the judge's position from practicing in the court that the trial judge is currently occupying simply because of the challenger's announcement.

We hold that the trial judge erred in disbarring Mr. Lee from representing Husband in Fourth Circuit Court.

V.

Wife correctly points out that a judge is prohibited from allowing individuals "to convey the impression that they are in a special position to influence the judge," quoting the language of Canon 2(B), Code of Judicial Conduct, Rule 10, Rules of the Supreme Court. She argues that the trial judge would violate this Canon if he allowed Mr. Lee to take advantage of the trial judge's decision to recuse in Mr. Lee's cases. We disagree with Wife's reasoning. It is clear to us from the language of Canon 2(B) that Mr. Lee, by filing a motion seeking the trial judge's recusal and by advising a potential client that his entry into the case is likely to bring about a recusal, is not in a "special position to *influence* the judge," (emphasis added), as contemplated by the said Canon. Once the

trial judge decided that recusal was appropriate in *all* of Mr. Lee's cases, it was the trial judge's decision – and not any action by Mr. Lee – that brought about the trial judge's "exit" from his cases.

VI.

Wanda Kate Sauceman Joiner ("Wife") has filed a motion to supplement the record in this case. Husband has resisted that motion and seeks sanctions for its filing. Wife's motion is granted and the material filed with the motion has been considered by us in deciding this case. Obviously, Husband's request for sanctions is denied.

Wife also asks us to find that Mr. Lee misled this court in a response he gave at oral argument to a question posed by one of the judges on the panel. She seeks sanctions for his conduct. Mr. Lee has filed a response to Wife's request. We hold that Mr. Lee did not mislead the court. Accordingly, Wife's request for sanctions is denied.

VII.

Finally, Wife renews her motion – previously denied by a judge of this court – to consolidate this appeal with the pending appeal in the ***Rose*** case. Wife's renewed motion is denied. Our decision in this case is not intended as, and should not be read as, a pre-judgment of the ***Rose*** case. In the instant case, we simply hold that the trial court erred in enforcing a blanket order of disbarment against Mr. Lee so as to prevent him from acting as counsel for Husband in Fourth Circuit Court in the instant litigation.

VIII.

The judgment of the trial court is reversed. This case is remanded to the trial court for further proceedings consistent with this opinion. Since the appellant is the prevailing party in this case and since it would be patently unfair to tax the appellee with the costs of this appeal, exercising our discretion, we elect not to tax the costs in this case.

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CHARLES D. SUSANO, JR., JUDGE